Petition

Office - Supreme Court, U.S.
FILED
OCT 29 1981
ALEXANDER L. STEVAS,
CLERK

81-807

NO. _____

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM 1981

ANNE M. PAVILONIS,
Petitioner,

v.

TULLULAH MORGAN ET. AL.,

JOHN O'BRYANT ET. AL.,

EDWARD F. KING ET. AL.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

ANNE M.. PAVILONIS, Pro Se
292 Park Street
P.O. Box 61
Boston, Ma. 02132

QUESTIONS PRESENTED

The question of denying a parent pleading pro se intervention of right in the desegregation case; and denying the pro se pleader procedural due process is presented.

Did the Appeals Court abuse its discretion in affirming the District Court's Order denying a parent pleading pro se intervention of right in the desegregation case?

Is the District Court's Order denying the pro se pleader procedural due process, and the Court's obstruction of an appeal from that Order an abuse of discretion?

Did the Appeals Court abuse its discretion in affirming the lower Court's Order denying procedural due process?

Did the appeals court abuse its discretion in failing to address the issues presented upon appeal?

Did the Court of Appeals abuse its discretion in denying the petitioner's motion to stay the mandate pending a final Order from this court?

May the District Court enter remedial orders requiring the race-conscious assignment of children to public schools, obstructing Acts of Congress, deny a parent intervention of right in the desegregation case having adverse effects upon her minor children?

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TABLE OF AUTHORITY

Table of Cases

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Karnuth v. United States, 279 U.S. 230 (1929)

Kentucky v. Indiana, 281 U.S. 164 (1930)

Motor Terminal, Inc. v. National Car Co., D.C. Del. 1949, 92 F. Supp. 155

Pierce v. Society Of Sisters, 268 U.S. 518, 519 (1925)

Railroad Trainmen v. B & O.R. Co., 331 U.S. 519 (1947)

Smuck v. Hobson, 408 F. 2d 179, 180 (1969)

Swann v. Charlotte Mecklenburg Board of Education, Constitutional Law at paragraph 5, 91 S. Ct. 1267 (1971)

Trbovich v. Mine Worker, 404 U.S. 539 (1972)

U.S. v. Ohio R.R. Co, 225 U.S. 323

Statutes

20 U.S.C.A Sec. 1754

36 C.J.S. Sec. 297 (55) p. 1193

Constitution of the United States 5th and 14th Amendments

Constitution of the United States, Art. III, Sec. 2, Cl.2

Massachusetts General Law Ch. 71B

Public Law 88-352, Sec. 401 (b)

Public Law 92-318, Title V111, Sec. 801, 802 (a)

Public Law 94-142, Education of the Handicapped Act, Sec. 602 (16),(17),(18)

OPINIONS BELOW

The Order of the U.S. District Court for Massachusetts denying a motion to intervene in the Boston schools case, NO. 72-911-G is entered April 9, 1981, is printed at A-1, infra, and is not published.

The Court of Appeals for the First Circuit Judgment affirming the denial entered June 30, 1981, is printed at B-1, infra. The Court of Appeals Opinion is entered June 30, 1981, and printed at B-3 to B-6, infra, and is not reported. The Order of the Court of Appeals denying a motion for a rehearing entered August 6, 1981, and printied at B-7, infra. The Order of the Court of Appeals denying a motion to stay the mandate pending a final order from this Court entered August 10, 1981, is printed at B-8, infra.

The Order of the U.S. District Court for Massachusetts denying a motion to

intervene entered July 18, 1980 is printed at C-1, infra, and is not published.

The Order from the U.S.District Court for Massachusetts denying intervention entered October 23, 1980, is printed at C-2 to C-3, infra, not reported.

The Court of Appeals for the First Circuit Judgment affirming the denials is entered June 30, 1981, and printed at D-1, infra. The Opinion of the Court of Appeals entered June 30, 1981, and printed at D-3 to D-10, infra, and is not published. The Order of the Court of Appeals denying a rehearing is entered August 6, 1981, printed at D-11, infra. The Order of the Court of Appeals denying the motion to stay the mandate entered August 10, 1981, is printed at D-12, infra.

The Order of the U.S.District Court denying a motion to file entered January 27, 1981, and printed at E-1, infra, and it is not published.

The Judgment of the Court of Appeals for the First Circuit affirming the district court entered August 11, 1981, is printed at F-1, infra. The Opinion of the Court of Appeals entered August 11, 1981, and printed at F-2 to F-9, infra, and is not published. The Order of the Court of Appeals denying the motions for a rehearing and to stay the mandate entered August 24, 1981, and printed at F-10, infra.

JURISDICTION

The date of two opinions of the Court of Appeals for the First Circuit sought to be reviewed is June 30, 1981 which is also the date of its filing. Motions for a Rehearing of the decisions were denied by the Court of Appeals for the First Circuit by an Order dated August 6, 1981, respectively.

The date of the third opinion of the Court of Appeals for the First

Circuit sought to be reviewed is August 11, 1981 which is also the date of its filing. A Motion for a Rehearing of that decision was denied by the Court of Appeals for the First Circuit by an Order dated August 24, 1981. Jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL PROVISIONS

Johnson v. San Francisco Unified School District, 500 F. 2d 349 specifies in pertinent part,"---concern for their children's welfare was sufficient under the circumstances to satisfy that requirement for intervention of having sufficient interest in the outcome".

Karnuth v. United States 279 U.S. 230 specifies in pertinent part, "There is nothing in legislation to suggest that in the exercise of judicial power ---principals of equity---are to be disregarded or modified".

Kentucky v. Indiana 281 U.S. 164 (4) specifies in pertinent part, "---an individual citizen may be a party where relief is properly sought against him, and in such case he should have suitable opportunity to show the nature of his interest and why relief sought against

him individually should not be granted".

Motor Terminal, Inc. v. National Car Co., D.C. Del. 1949, 92 F. Supp. 155 specifies in pertinent part, "--- and there is coupled with a prayer for declaratory relief a general prayer for coercive relief".

Pierce v. Society Of Sisters, 268 U.S. 518, 519 specifies in pertinent part, "Take away from the parents all care and concern for their children's education, and you make a social life an impossible and unintelligible notion,"

Railroad Trainmen v. B & O.R.Co., 331 U.S. 519 specifies in pertinent part, "---bound by any judgment that might be entered in the case, because the appellants are members of the class---and the judgment effect the appellant individually. Once it is clear that an effect of that degree is present---there is no room for the operation of the court's

discretion".

Smuck v. Hobson, 408 F. 2d 179, 180 specifies in pertinent part, "disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process---may---be met by allowing parents whose only interest is the education of their children to intervene".

Trbovich v. Mine Workers, 404 U.S. 539 specifies in pertient part, "---have a valid complaint about the performance of "his lawyer". Such a complaint warrant relief in the form of intervention of right under Rule 24 (a)".

U.S. v. Ohio R.R. Co. 225 U.S. 323 specifies in pertinent part, "The sole authority of the court below was confined ---to determining questions of law arising upon the case as presented on the face of the pleadings".

Statutes

20 U.S.C.A. Sec. 1754

36 C.J.S. Sec. 297 (55) p. 1193

Constitution of the United States, 5th and 14th amendments.

Constitution of the United States, Article 111 Sec. 2 cl. 2.

Massachusetts General Law Ch. 71B

Public Law 88-352, Sec. 401 (b)

Public Law 92-318, Title V111, Sec. 801, 802(a)

Public Law 94-142, Education of the Handicapped Act, Sec. 602 (16), (17), (18)

STATEMENT OF THE CASE

The District Court of Garrity-J. entered remedial orders in the desegregation case requiring the race-conscious assignment of children to and within the Boston public schools to achieve a racial ratio in the District 111 schools.

The court's orders excluded children with special education needs from being assigned to schools beyond their community district school. However, the petitioner found the court's order excluding children for special education and assigning children to achieve a racial ratio are mutually exclusive events.

The Boston public school department assigned the petitioner's children to and within the public schools on a race-conscious bases depriving them of the special education needs in order to achieve a racial balance. Having appealed to the State Board of Education and upon

receiving the final Administrative agency decisions the petitioner sought to intervene to accomplish judicial review.

In her answers and counter-claim the petitioner alleges the plaintiff in citing Brown v. The Board of Education 1955, 349 U.S. 294. 299 has brought an illegal issue. The law in Brown was superceded by Acts of Congress of 1964, 1972, respectively. The petitioner alleges collusion exists between the plaintiff and defense counsel for the purpose of collecting fees, and effecting racial balance.

The complaints cite certain irregularities in the federal and state regulations in addition to the court's orders obstructing the enforcement of the Acts of Congress as cited, thus, permitting the race-conscious assignment of children to and within the Boston public schools for the purpose of achieving racial balance to continue; resulting in

the denial of equal education opportunity.

These regulations and the court's orders are the bases for the petitioner's inability to obtain special education services and programs for her minor children. The district court has subject matter jurisdiction and is the appropriate court to accomplish judicial review of the agency decision denying special education services. Filing a motion to intervene, answer and counter-claim with accompanying complaints the court denied the petitioner intervention of right; and obstructed an appeal from his denial (Appen. G-1).

Departing from previous rulings of this Court as set forth in the Constitutional Provisions, supra, and neglecting to answer the issues presented the Court of Appeals for the First Circuit upheld the district court.(Appen.B1-B7, D1-D12)

Procedural due process was denied

the petitioner in the accompanying appeal. The Court of Appeals for the First Circuit citing Pavilonis v. King, 626 F. 2d 1075 (1st Cir. 1980) as the authority for their denial.

The issues in the complaints raised speak to overcharges by the utility company, Bostongas Company and Boston Edison Company, acting in concert with the Department of Public Utilities and the Supreme Judicial Court of the Commonwealth in denying the petitioner equal protection of the state laws and federal regulation. The petitioner alleges the practices of the defendants obstruct the enforcement of the laws resulting in monthly charges fourteen times greater than permitted by law. The appeal court failed to address the issues presented upon appeal and entered an opinion in which they state the complaint does not warrant a response from the defendants. (Appen. F-7)

The petitioner alleges were rules are completely adequate, prohibition is unnecessary and constitutes mere arbitrariness and wanton use of power. The court of appeals has so far departed from the rules and decisions of this Court and sanctioned the departure by the lower court, as to call for an exercise of this Court's power of supervision. Related cases NO. 79 U.S. 42 (cert. denied), NO. 79 U.S. 1828 (cert. denied)

Federal jurisdiction may be found at 28 USCA 1331; 18 USCA 241, 242; 28 USCA 2201; 5 USCA Ch. 7, Sec. 706 (22); FRCP 8a, 54c.

ARGUMENT

The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings; and so far sanctioned such a departure by a lower court as to call for an exercise of this Court's power of supervision.

The basic questions raised in the cases, the constitutionality of race-conscious assignment of children to and within the public schools, and over-charges of the utilities is of national importance as it impacts on every child in public education and every family unnecessarily burdened by the cost of the utilities.

The district court's remedial Orders in conjunction with the federal and state regulations called into question by the complaint are the very bases for obstructing the enforcement of the Acts of Congress and Massachusetts law. This Court's commitment to an equitable school system and the petitioner's relief is timely.

The petitioner contends the lower court's denials take away a most substantial part of the liberty and freedom

of a parent, the right to guide one's children intellectually by providing for her children the free appropriate education; and the exercise of due process guanteed in the Constitution. The question is urgent.

CONCLUSION

The basic issues raised by this appeal, the constitutionality of the race-conscious assignment of children to and within the public schools, and the denial of procedural due process of a parent pleading pro se is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court. The petition for writ of certiorari should be granted.

PRAYER

WHEREFORE, the petitioner prays this Court will grant:

1. The writ of certiorari;
2. Enter a decree staying the mandate until the final order of this Court is entered;
3. Enter a decree prohibiting the district court from allowing the plaintiffs' and defendants' joint motion for judgment;
4. Reverse and remand with orders to the district court to allow the petitioner to intervene in the desegregation case presently before the district court of Judge Garrity;
5. Reverse and remand with orders to the district court to permit the filing of the petitioner's complaints and grant procedural due process;
6. That this Court make such further order as it may deem just and proper.

By Its Attorney, pro se

Anne M. Pavilonis

APPENDIX A

UNITED STATES DISTRICT COURT

for MASSACHUSETTS

TULLULAH MORGAN ET AL.,
Plaintiffs

v.

DAVID I. FINNEGAN, ET AL.,
Defendants

ANNE M. PAVILONIS,
Applicant for intervention

CIVIL ACTION

NO. 72-911-G

MBD-79-511-Z

Motion to review and enter an order upon applicant's motion to intervene numbered at MBD-79-511-Z

In support of her motion the applicant states: The district court of Judge Zobelle denied a motion to file a motion to intervene, motion to file answer and counterclaim and complaint of intervenor in the desegregation case presently before you and numbered at CA-72-911-G.---

"4/9/81 Denied- I already considered and ruled upon this application in CA-72-911-G on 10/23/80. Garrity, J."

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO. 81-1248.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN O'BRYANT, ET AL.,
Defendants, Appellees.

ANNE M. PAVILONIS,
Appellant.

JUDGMENT

Entered June 30, 1981

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and submitted on the original record and the briefs.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the district court is affirmed.

B-2

By the Court:

/s/ Dana H. Gallup

Clerk.

B-3

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO.. 81-1248.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN O'BRYANT, ET AL.,
Defendants, Appellees,

ANNE M. PAVILONIS,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
(Hon. W. Arthur Garrity, Jr., U.S. District Judge)

Before

Gibson,* Senior Circuit Judge,

Campbell and Bownes, Circuit Judges.

Anne M. Pavilonis on brief pro se,
Robert H. Bohn, Jr., Assistant Attorney General, on brief for appellee.

June 30, 1981

* Of the Eighth Circuit, sitting by designation.

Per Curiam. This appeal concerns an order identical to that which we reviewed and affirmed in Morgan v. McDonough, No. 80-1746 (1st Cir. June 30, 1981). In both of these cases appellant has sought, and has been denied, permission to intervene in Morgan v. McDonough, Civil No. 72-911-G (D.Mass.) to raise claims on her objections to the manner in which her two children have been classified with respect to special education programs in the Boston Public Schools. In No. 80-1746 appellant's request to intervene was filed directly within Morgan v. McDonough. In the present appeal the motion to intervene was filed and entertained by the district court as a separate miscellaneous matter. Despite these separate procedural avenues the requests, and the reasons for their denial, are identical. Our decision in No. 80-1746 therefore controls and for

the reasons stated therein the district court's order of April 9, 1981, denying appellant's motion to intervene, is summarily affirmed. First Circuit Rule 12.

So ordered.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO.. 81-1248.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN O'BRYANT, ET AL.,
Defendants, Appellees.

ANNE M.. PAVILONIS,
Appellant.

Before GIBSON*, Senior Circuit Judge,
CAMPBELL and BOWNES, Circuit Judges.

ORDER OF COURT

Entered August 6, 1981

It is ordered that the petition for rehearing herein filed on July 9, 1981, be, and the same hereby is, denied.

By the Court:

/s/ Dana H. Gallup
Clerk.

---

* Of the United States Court of Appeals for the Eighth Circuit, sitting by designation.

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO.. 81-1248.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN O'BRYANT, ET AL.,
Defendants, Appellees.

ANNE M.. PAVILONIS,
Appellant.

ORDER OF COURT
Entered: August 10, 1981

Upon motion,

It is ordered that motion to stay mandate is hereby denied..

By the Court:

/s/ Dana H. Gallup

Clerk.

APPENDIX C

UNITED STATES DISTRICT COURT
for MASSACHUSETTS

TULLULAH MORGAN ET AL., Plaintiffs v. JOHN MCDONOUGH ET AL., Defendants ANNE M.. PAVILONIS, Applicant for intervention	CIVIL ACTION NO.. 72-911-G

MOTION TO INTERVENE

Movant moves for leave to intervene as a defendant and counterclaim in the above-styled action and as her ground for intervention of right shows:

1. Movant, as a resident of Boston, with minor children attending the Boston Public Schools is entitled to intervene of right herein pursuant to Rule 24 (a)(2) of the Federal Rules of Civil Procedure in that movant has a special equity interest-

"7/18/80 Upon consideration of motion and attachments, motion denied without hearing oral argument. Garrity-J."

C-2

UNITED STATES DISTRICT COURT

for MASSACHUSETTS

TULLULAH MORGAN ET AL.,
Plaintiffs

v.

JOHN MCDONOUGH ET AL.,
Defendants

CIVIL ACTION
NO. 72-911-G

MOTION TO
intervene

ANNE M. PAVILONIS,
Applicant for intervention

MOTION TO INTERVENE

Movant moves for leave to intervene as a defendant and counterclaim in the above-styled action and as her ground for intervention of right shows:

1. Movant, as a resident of Boston, with minor children attending the Boston Public Schools is entitled to intervene of right herein pursuant to Rule 24(a)(2) of the Federal Rules of Civil Procedure in that movant has a special equity interest impaired by the inadequate representation by existing parties---

"10/23/80 Denied without hearing oral

argument. Garrity, J."

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO.. 80-1746.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN MCDONOUGH, ET AL.,
Defendants, Appellees,

ANNE M.. PAVILONIS,
Appellant.

JUDGMENT

Entered June 30, 1981

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was submitted on the original record and the briefs.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the district court is affirmed.

D-2

By the Court:

/s/ Dana H. Gallup

Clerk

D-3

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO.. 80-1746

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN MCDONOUGH, ET AL.,
Defendants, Appellees,

ANNE M.. PAVILONIS,
Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

(Hon. W. Arthur Garrity, Jr., U.S. District Judge)

Before Gibson,* Senior Circuit Judge, Campbell and Bownes, Circuit Judges.

Anne M. Pavilonis on brief, pro se
Robert H. Bohn, Jr., Assistant Attorney General on Brief for Appellee, State Board of Education.
Marshall Simonds, Henry C. Dinger and Goodwin, Proctor & Hoar on brief for appellee Boston School Committee.

JUNE 30, 1981

*Of the Eighth Circuit, sitting by designation.

Per Curiam. Appellant Anne Pavilonis seeks review of the order of the district court which denied her motion to intervene in Morgan v. McDonough, Civil No. 72-911-G; a nine-year old school desegregation action concerning the Boston, Massachusetts public school system. Appellant's motion to intervene dated October 23, 1980,[1] invoked Fed. R. Civ. P. 24(a)(2) (intervention of right) and alleged that she had "a special equity interest impaired by the inadequate representation by existing parties in upholding against plaintiffs' challenge of the validity of assigning children to Boston Public Schools with regard to race that

1. The record also indicates that a similar motion to intervene was filed on July 18, 1980 and denied on that same date. No appeal was taken from this earlier denial.

cannot be adequately represented because of movant's herein after described separate defense against and counterclaim relating to plaintiffs' suit---." The proposed answer and counterclaim,[2] and the materials that accompany it, reveal that appellant is the mother of two children who are students attending Boston Public Schools. It appears that both students suffer from learning disabilities and have been assigned to special education programs. Appellant has disagreed with the specific programs to which each child has been assigned and has continually sought review and reassignment to a different program.

---

2. In her motion to intervene appellant requested leave to intervene as a defendant and attached her proposed answer and counterclaim. However, also attached to her motion to intervene was a "Complaint for Judicial Review, Declaratory and Injunctive Relief."

These requests have been denied by the Boston Public Schools and by the Massachusetts Department of Education, Bureau of Special Education Appeals. The materials filed in the district court argued that these decisions were wrong and stated that intervention was sought in No. 72-911-G on the grounds that the decision and orders entered therein had adversely affected the outcome of the requests she had made for special placement of her children. The proposed complaint also sought to have the administrative decision reversed.

To be entitled to intervene as of right a party seeking intervention must, as a threshold requirement, claim and show that it has "an interest relating to the property or transaction which is the subject of the action and (that) (s)he is so situated that the disposition of the action may as a practical matter

impair or impede his (her) ability to protect that interest." Fed. R. Civ. P. 24 (a); Moosehead Sanitary District v. S.G. Philips Corp., 610 F. 2d 49, 52 (1st Cir. 1979). Appellant's grievance with respect to the placement of her two sons in particular special treatment programs has simply no direct or indirect relationship to the subject matter and remedies involved in Morgan v. McDonough, No. 72-911-G. The assertion that her children have been denied the special services she has long sought because of the effect of remedial orders entered in Morgan v. McDonough has no merit. Appellant herself concedes, and the record plainly indicates, that all remedial orders in Morgan v. McDonough specifically exclude students with special education needs. Nor can appellant be said to be so situated that disposition of Morgan v. McDonough will impair or impede her

ability to protect her interest. Whatever her interest may be, they deal only with obtaining judicial review of the final decision of the Bureau of Disability Appeals of the Department of Education. This interest, however, cannot be entertained nor remedied in Morgan v. McDonough. Simply stated, more direct and appropriate avenues of review have been created for such purposes.[3] See Mass. Gen. Laws Ann. c. 71B, sec. 3; 766 C.M.R. sec. 406.1 et seq.; 20 U.S.C. sec. 1415 (e)(2). Therefore, because appellant's allegation and claims for relief were so unrelated to the suit in which she sought to intervene the district court was correct in denying her request.

Affirmed.

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3. In so stating we do not necessarily hold or imply that resort to these other avenues of relief may still be possible or may still be timely. We list these only to demonstrate that appropriate relief was otherwise available. The materials filed

by appellant clearly reveal that she was notified of these and, therefore, should have been aware of them.

D-11

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

NO.. 80-1746.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v.

JOHN MCDONOUGH, ET AL.,
Defendants, Appellees.,

ANNE M. PAVILONIS,
Appellant.

Before GIBSON*, Senior Circuit Judge,
CAMPBELL and BOWNES, Circuit Judges.

ORDER OF COURT

Entered August 6, 1981

It is ordered that the petition for rehearing herein filed on July 9, 1981, be, and the same hereby is, denied.

By the Court:
/s/ Dana H. Gallup.
Clerk.

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* Of the United States Court of Appeals for the Eighth Circuit, sitting by designation

D-12

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO.. 80-1746.

TALLULAH MORGAN, ET AL.,
Plaintiffs, Appellees,

v..

JOHN MCDONOUGH, ET AL.,
Defendants, Appellees,

ANNE M.. PAVILONIS,
Appellant.

ORDER OF COURT

Entered: August 10, 1981

Upon motion,

It is ordered that motion for stay of mandate is hereby denied.

By the Court:
/s/ Dana H. Gallup

Clerk.

APPENDIX E

UNITED STATES DISTRICT COURT

for MASSACHUSETTS

ANNE M. PAVILONIS,
Plaintiff

C.A.77-3839-T

C.A.77-3745-T

v.

MBD 81-29

MICHAEL S. DUKAKIS, ET AL.,
Defendants

MOTION TO FILE

The Court's order of April 12, 1978, Tauro, J. states in pertinent part "--- It is Ordered that plaintiff, Anne M. Pavilonis, is hereby permenantly enjoined and restrained from filing, commencing or instituting any lawsuit against any defendant in this Court without order of a Judge of this Court authorizing such filing,---"

"1/27/81 Upon consideration of motion and attached pleadings motion denied. In our opinion, Complaint is plainly frivolous." Garrity-J.

APPENDIX F

UNITED STATES COURT OF APPEALS

for the FIRST CIRCUIT

NO.. 81-1078

ANNE M.. PAVILONIS,
Plaintiff, Appellant

v.

MICHAEL S.. DUKAKIS, ET AL.,
Defendants, Appellees.

JUDGMENT

Entered August 11, 1981

This cause was submitted on briefs on appeal from the United States District Court for the District of Massachusetts

Upon consideration whereof, It is now ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

/s/ Dana H. Gallup

Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 81-1078

ANNE M. PAVILONIS,
Plaintiff, Appellant,

v.

MICHAEL S. DUKAKIS, ET AL.,
Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
(Hon. W. Arthur Garrity, Jr., U.S.District Judge)

BEFORE COFFIN, CHIEF JUDGE,
BOWNES, CIRCUIT JUDGE,
and MAZZONE, U.S. District Judge*

ANNE M. PAVILONIS on brief Pro se.
Francis X. Bellotti, Attorney General, and Stephen S. Ostrach, Assistant Attorney General on brief for appellees.

AUGUST 11, 1981

*Of the District of Massachusetts, sitting by designation.

PER CURIAM. In Pavilonis v. King, 626 F. 2d 1075 (1st Cir. 1980), we affirmed an order of the District Court of Massachusetts which enjoined plaintiff-appellant, Anne M. Pavilonis, from filing, commencing or instituting any lawsuit, and prohibited the Clerk of that court from accepting such filings, without authorization by a district judge. Pavilonis presently appeals from an order of the district court denying her permission, which had been requested pursuant to the standing injunction, to file a civil complaint, a motion for a temporary restraining order and a motion for a preliminary injunction. Having examined the material submitted for filing, we find no abuse of discretion on the part of the district court and affirm its denial of appellant's request.

The central matter presented by Pavilonis' complaint concerns the term-

ination of gas and electrical utilities to her home. Her grievances are set out in a lengthy 20 page complaint which, excluding numerous attached exhibits, contain ten pages of a listing and quoting of different federal and state statutory provisions, eight pages of factual narration and two pages listing the specific relief sought. Names as defendants are the individual Justices of the Massachusetts Supreme Judicial Court, the Massachusetts Department of Public Utilities, the Boston Gas Company, the Boston Edison Company, Melvin Cohen (as Clerk of the Boston Housing Court),a Constable Andrades, the Boston Patrolman No. 637. In this complaint she accuses the two Boston utility company of overcharging her and of obtaining collection and terminating her services by coercive and illegal means. In her factual narration she implicates the Depart-

ment of Public Utilities and the Supreme Judicial Court as contributors to her alleged harm because they failed to properly supervise the utility companies and the lower Commonwealth courts and thereby permitted the illegal terminations. In addition to temporary and permanent injunctive relief against "coercive billing and collection practices" and a substantial damages award to herself and others like her, the complaint requests a "decree dissolving the Department of Public Utitlies" and "a decree ordering the members of the Supreme Judicial Court to vacate their position on the court forthwith."

Although we took care to point out in Pavilonis v. King, 626 F.2d at 1079, that we did not favor measures which constrict a litigant's access to the courts, an as such construed the injunction imposed rather narrowly, the district court was sufficiently justified to disallow the

filing of the complaint. First, we agree with the court that the complaint was "plainly frivolous." Most, if indeed not all, of the claims which could be recognized were fatally flawed. Some were obviously not legally maintainable, e.g., those which requested relief against the Supreme Judicial Court and the Department of Public Utilities. Others stated no federal cause of action under present law, see Jackson v. Metropolitan Edison Company, 419 U.S. 345 (1974)(private utility's termination of service does not involve state action implicating the Fourteenth Amendment). Still other claims were specifically contradicted by the attached documents to the complaint which revealed that Pavilonis had recourse to, and had recieved on different occasions both favorable rulings and relief from, the Department of Public Utilities and the Boston Housing Court.

Second, while it appears that some parts of the complaint might be construed to state some plausible claim, we do not think the district court was required to sift through the maze of appellant's factual allegations and pair them off with an inordinate listing of statutes and case law to create some semblance of a legitimate complaint. Although the narrow interpretation we have given the injunction required only that appellant "satisfy a district judge that her pleadings are sufficiently plain and definite to satisfy Rule 8 and to warrant a response," Pavilonis v. King, 626 F. 2d at 1079, this did not require the district judge to redraft the complaint himself to make it "sufficiently plain and definite." Moreover, given appellant's past history of a proneness toward excessive litigation[1] we do not fault the district court for declining to proceed without a com-

plaint presenting some facially legitimate basis for relief. This is not to say that appellant will now be held to a higher standard of demonstrating a meritorious case before being allowed to file. Compare Gordon v. United States Department of Justice, 558 F.2d 618 (1st Cir. 1977); Rudnicki v. Department of Massachusetts Attorney General, 362 F.2d 337 (1st Cir. 1966). But by inundating the complaint with much groundless substance appellant made it impossible for the district court, and consequently to the named defendants, to separate the seed from the chaff. Despite the liberal reading courts are required to give pro se pleadings here whatever legitimacy or merit appellant's grievances may possess simply become lost and undecipherable within the catchall broadside attack initiated by appellant against indiscriminately named defendants. In the light of previous experience the

district court was within its bounds in declining to allow the matter to proceed, or to put the named defendants to the task of defending on the basis of a complaint facially lacking any substantial attribute of legitimacy.

The order of the district court is hereby affirmed.[2]

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1. Which includes the filing of numerous appeals: Morgan v. McDonough--Anne M. Pavilonis appellant, 80-1746 (June 30, 1981); Pavilonis v. Dukakis, 81-1248 (June 30, 1981); Pavilonis v. Dukakis, Misc. No. 80-8070 (October 1980); Pavilonis v. Secretary of Health, Education and Welfare, 80-1228 (July 29, 1980); Pavilonis v. Califarno, 79-1076 (April 9, 1979); Pavilonis v. Ryder, Misc. 78-8059 (June 9, 1978).

2. In light of our present disposition of this appeal we accordingly deny appellant's motion to find appellees' in default, see Fed. R. App. P. 31(c); and her motion for emergency relief.

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UNITED STATES COURT OF APPEALS

for the FIRST CIRCUIT

NO.. 81-1078

ANNE M. PAVILONIS,
Plaintiff, Appellant

v.

MICHAEL S. DUKAKIS, ET AL.,
Defendants, Appellees.

Coffin, Chief Judge,
Bownes, Circuit Judge,
and Mazzone, District Judge*.

ORDER OF COURT

Entered August 24, 1981

It is ordered that the motion for rehearing be, and the same hereby is denied and

It is also ordered that the motion for stay of mandate be, and the same is hereby denied.

By the Court:

/s/ Dana H. Gallup.

Clerk

APPENDIX G

United States Government

MEMORANDUM Dated: Nov. 12, 1980

To: George F. McGrath, Clerk

From: W. Arthur Garrity, Jr.
United States District Judge

Subject: Pavilonis v. Dukakis
MBD 79-511

The memorandum and order of the Court of Appeals entered October 29, 1980 were sent to me, presumably because the plaintiff seeks to intervene in the Boston schools desegregation case, Civil Action No. 72-911-G. Upon inspecting the Clerk's file I find that the order entered December 19, 1979 to which the Circuit Court's memorandum relates was entered by Judge Zobel, to whom I am sending a copy of this memo and to whom the Circuit Court's order should probably be referred.

By reason of orders I entered in the schools case on October 23, 1980, the matter is probably moot. In Morgan v. McDonough, C.A. 72-911-G, Mrs. Pavilonis

filed a motion for leave to file and a motion to intervene in that case. At the time I was unaware of the order entered by Judge Zobel on December 19, 1979 in MBD 79-511 and of the pendency of an appeal in that case. On October 23, 1980 I allowed Mrs. Pavilonis's motion for leave to file and denied, without hearing oral argument, her motion to intervene. I compared the motion to intervene on which I acted with the motion to intervene filed in the MBD case and they appear to be identicle.

I am also filing a copy of this memo in the Boston schools case.

cc: Judge Zobel